IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 7520 of 2003

Between:

The Sirpur Paper Mills Limited, rep. by its Executive Director,

S.K.Khare, s/o. e Sri Gajadhar Prasad,

R/o. Sirpur Kaghaznagar, Adilabad dist. … Petitioner

AND

1)The Deputy Commissioner of Labour-cum-Authority
under Minimum Wages Act, Warangal

2)The Assistant Commissioner of Labour, Adilabad

3)A.P. Contract Labour Union (Regd. No.B-1996), The
Sirpur Mills Ltd. Unit, A-14, SPM New Colony, Sirpur-Kaghaznagar

Adilabad dist. Rep. by its unit Secretary A.Kameswara Rao

(R.3 is impleaded as per court order dated 05.04.2004 in WPMP NO.7486 of 2004)

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or orders, direction or directions declaring the proceedings dated 26.07.2002 as illegal and the action of the first respondent in entertaining the cases filed by the first respondent under the Minimum Wages Act seeking enforcement of G.O. Ms. No.69 dated 292.11.2000 and G.O. Ms. No.30 dated 28.04.2001 filed against the petitioner as illegal, unsustainable and unconstitutional and to issue a consequential direction to the first respondent not to proceed further with the M.W. case No.6 of 2002 to 21 of 2002 and 24 of 2002 to 29 of 2002 pending on his file so far as the petitioner is concerned.

Counsel for the Petitioner: MR.V.SRINIVAS
Counsel for the Respondent Nos 1 and 2: GP FOR LABOUR
Counsel for the Respondent no.3: Mr. M.Radhakrishna Murthy.

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 7520 of 2003

ORDER:

Heard Sri Vedula Srinivas, learned counsel appearing for the petitioner and the learned Government Pleader for Labour appearing on behalf of the second respondent and Sri M.Radhakrishna Murthy, learned counsel for the third respondent.

The petitioner herein, which is a management, filed this Writ Petition, *inter alia*, seeking for a Writ of Mandamus seeking declaration that the proceedings dated 26.07.2002 of the first respondent herein as bad and illegal, and challenging its action in entertaining the cases filed under the provisions of Minimum Wages Act, 1948 seeking enforcement of G.O. Ms. No.69, dated 29.11.2000 and G.O. Ms. No.30 dated 28.04.2001 as illegal and not maintainable, and further for a direction against the first respondent not to proceed further with the M.W. Case No.6 of 2002 to 21 of 2002 and 24 of 2002 to 29 of 2002.

The case of the petitioner, in brief, is that it is a paper mill which has been established in the year 1939 in the backward district of Adilabad and at one time, it was one of the leading paper mills. It employs nearly 3500 employees and manufactures various types of paper and paper board. It was further contended that the petitioner engages contractors for the purpose of execution of certain works, who in turn engage their own labour and turn out the work. The petitioner is

already holding a licence under the provisions of Contract Labour (Abolition and Regulation) Act, and the contractors who have been engaged, are also licenced persons under the said Act. Therefore, it was contended that there was no relationship of employer-employee between the petitioner and the persons engaged by the contractors. Further, the first respondent herein had issued a notice on 22.07.2002 purported to be under the provisions of the Minimum Wages Act, 1948, to the petitioner calling for a meeting in regard to compliance of the payment of minimum wages under G.O. Ms. No.69, dated 29.11.2000 and G.O. Ms. No.30, dated 28.04.2001. The case of the petitioner is that neither of the G.Os. has any application to it from the very nomenclature nor they are contemplated to apply for the nature of industry to which the petitioner belongs. According to the petitioner, the first G.O. No.69 is only meant for those in the employment of construction or maintenance of roads and buildings operations, whereas the second G.O. No.30 is only meant for employment in metal foundries and general engineering industries, and therefore, the petitioner, which is a paper industry, can not fall well within their ambit. However, in spite of the same, having held a meeting on 12.07.2002, the first respondent passed order on 26.07.2002 directing the petitioner and its contractors to implement of both the aforesaid G.Os. in regard to payment of minimum wages. The petitioner submitted a representation on 07.08.2002 pointing out that either of the notifications would not apply to it, which is a paper industry. Thereupon, the first respondent gave a notice on 08.08.2002 for production of records on 14.08.2002. However, at his instance, the second respondent sought to conduct an inspection of the factory and submitted a report. Further, he had filed a claim petition under Section 20 of the Minimum Wages Act,1948 complaining that the petitioner failed to comply the aforesaid G.Os. 69 and 30. Thus, in all 23 cases have been filed against the petitioner in respect of the persons who have been engaged by about 22 contractors and the same were still pending. Thus, having regard to the fact that either of the aforesaid G.Os. can not be pressed into service in respect of the

petitioner-industry, there can not be any compliance thereof nor would it fall well within the definition of the employee as defined under the provisions of the Contract Labour (Abolition and Regulation) Act or E.S.I. Act or P.F. Act or Workmen Compensation Act, etc. Therefore, the entire proceedings on the basis of the aforesaid two notifications are wholly unsustainable and for no reason, the petitioner is being sought to be multed with the liability. Hence, the Writ Petition.

In the counter affidavit filed on behalf of the second respondent, it is stated that having regard to the nature of work done by the contract labour through its contractors, they would squarely fall well within the coverage of the aforesaid G.Os. 69 and 30, and therefore, the labour are entitled to minimum wages as prescribed under the provisions of the Minimum Wages Act, 1948. Since the petitioner is not paying the minimum wages in terms of the said notifications, necessarily 22 cases have been registered against the petitioner under Section 20 of the Minimum Wages Act and the same were pending. It was further contended that it has come to the notice after inspection that the contractors are paying far less wages than the one contemplated under the aforesaid notifications. Therefore, the impugned proceedings are perfectly valid and sustainable. However, enquiry in the said 22 cases is still pending and the petitioner has not filed any counter in the said cases. By pressing into service Rule 25 of the A.P. Contract Labour (R&A) Rules, 1971, it was stated that the petitioner and the contractors are bound by the rates prescribed under the Minimum Wages Act, 1948. The petitioner, being a principal employer, there is a relationship of master and servant and the aforesaid notifications are squarely applicable to the petitioner.

In the counter affidavit filed along with an application to vacate interim orders granted by this Court on 25.04.2003 staying the proceedings in the aforesaid pending cases and after hearing of which, the counsel on either side having agreed to argue their main cases, it is stated that both the aforesaid notifications squarely apply to the petitioner-industry and the said plea is unsustainable. Further, it is

also pointed out that during all the period, the petitioner is paying wages and no objection was raised nor any doubt is expressed in regard to its applicability and therefore, having maintained silence for more than a year from the date of issuance of first intimation on 26.07.2002, it is not open for the petitioner to resile back. It is also further pointed out that the petitioner's employment squarely falls well within the scheduled employment. Even as per the provisions of the of Contract Labour (Abolition and Regulation) Act and the Rules made therein, the wages as contemplated would include minimum wages as provided for under the provisions of the Minimum Wages Act and therefore, the entire claim as made by the petitioner in trying to escape from liability, is wholly unsustainable.

Learned counsel appearing for the petitioner contends, *inter alia,* that having regard to the very object and nomenclature of both the notifications, it can not be made applicable to the petitioner, which is only a paper industry. Therefore, the said notifications having not been issued in respect of the petitioner like industries, they can not be made applicable to it.

Both the learned counsel appearing on behalf of the respondents sought to repel the aforesaid contention on the ground that the authorities are rightly proceeding under the provisions of the Minimum Wages Act, 1948 for violation in regard to payment of minimum wages and both the notifications squarely apply to the petitioner-industry as well.

Considering the submissions made and on perusal of the material, the question which comes up for consideration is as to whether on the facts and circumstances, G.O. Ms. No.69, dated 29.11.2000 and G.O. Ms. No.30 dated 28.04.2001 are applicable to the petitioner-industry ?

There is no dispute to the fact that the petitioner is a paper industry and the same is duly holding licence under the provisions of the Contract Labour (Abolition and Regulation) Act and further, it has been engaging contractors and extracting work through the persons

employed by the said contractors, who are also licence holders under the said Act. The impugned proceedings have been initiated at the instance of the first respondent herein in seeking to comply the G.O. Ms. No. 69 dated 29.11.2000 and G.O. Ms. No.30, dated 28.04.2001 on the ground that the wages as being paid to the said labour, are not in consonance with the minimum wages prescribed therein, and therefore, there is violation of the aforesaid notifications. Accordingly, about 23 cases have been filed against the petitioner under Section 20 of the Minimum Wages Act, which were still pending.

The main submissions center around as to whether the notifications as sought to be placed reliance by the respondents, are applicable to the petitioner industry. There is no dispute to the fact that the petitioner is a paper manufacturing industry. Whereas G.O. Ms. No.69, dated 29.11.2000, which has been issued under the provisions of the Minimum Wages Act, 1948, clearly states that the minimum rates of wages are being fixed in respect of a person employed in the construction or maintenance of roads and buildings operations as specified in part-I Schedule of the Minimum Wages Act, 1948. Similarly, G.O. Ms. No.40, dated 28.04.2001 states similar such fixing of minimum wages in respect of persons employed in metal foundaries and general engineering in part-I Schedule of the Minimum Wages Act, 1948. On the fact of it, having regard to the nature of industries as contemplated in either of the notifications, the petitioner industry would not in any way fall either in the construction or maintenance of roads and buildings operations or in metal foundaries and general engineering. It is not the case of the respondents that the petitioner industry is involved in any such nature of work as specified above. In the circumstances, it can not be said that the said notifications are either meant or sought to be issued in regard to the paper industry. Except mentioning that the said both the notifications are applicable to the petitioner industry, there is no proper explanation forthcoming on the part of the respondents herein as to how the said notifications which are meant for those industries

as specifically mentioned therein, can be made applicable to the petitioner industry, which is totally a different and distinct from its very nature and activities, etc. In the circumstances, it is to be held that neither of the said notifications can be made applicable to the petitioner, which is a paper industry.

During the course of arguments, it is also pointed out that even in regard to the paper industry a notification has been issued in G.O. Ms. No.24, Labour, Employment, Training & Factories (Lab .II), dated 20.05.1996, under the provisions of the Minimum Wages Act, 1948, revising the minimum rates of wages in the employment in paper and paper boards (including straw board) including hand made paper manufactory. There is no serious dispute on the part of the petitioner herein about applicability of the said G.O. No.24. However, it has to be noticed that the said notification came into force only by issuance of gazette notification in A.P. Gazette part-I Extraordinary, No.131-D, dated 01.04.2004. Therefore, the very proceedings as sought to be initiated against the petitioner industry for violation of the any of the aforesaid G.Os. 69 or 30, are not maintainable. Therefore, the entire impugned proceedings initiated, including the order dated 26.07.2002, are illegal and accordingly, the same are liable to be set aside.

Further, it can not be said that even the G.O. No.24, dated 20.05.1996, which came into force by issuance of gazette notification dated 01.04.2004, can be made applicable with retrospective operation. The respondents can not take advantage of subsequent notification and proceed further with either of the impugned proceedings.

The Writ Petition is, accordingly, allowed. The impugned proceedings dated 26.07.2002 are set aside and consequently, the entire proceedings in M.W. Case No. 6 of 2002 to 21 of 2002 and 24 of 2002 to 29 of 2002 are quashed. No costs.

(B.Prakash Rao, J.)

14.03.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on Monday the Fourteenth day of March two thousand and five.

…Registrar

Copy to:

1)The Deputy Commissioner of Labour-cum-Authority
under Minimum Wages Act, Warangal

2)The Assistant Commissioner of Labour, Adilabad

3) Two CCs to the G.P. for Labour, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

4)Two CD copies.